S.B. CIVIL MISC. APPEAL NO. 932/2006

DATED : 17.07.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.S.K. Sankhla for the appellants.

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By way of this appeal against the award dated 08.06.2005 made by the Motor Accidents Claims Tribunal, [Additional District Judge No. 2], Sriganganagar, Camp Suratgarh in Claim Case No.09/2002; the claimant-appellants seek enhancement over the compensation amount of Rs.10,75,000 awarded by the Tribunal on account of accidental death of Kishan Lal, husband of the appellant No. 1 and father of the appellants Nos. 2 to 4 and so also the respondents Nos. 4 and 5.

On 03.07.2001 the deceased Kishan Lal was traveling in a bus bearing registration No. RJ 07 P 2231 from Bikaner to Vijaynagar; near Raghunathpura, the bus hit against a roadside tree causing several injuries to the Kishan Lal who was admitted in Hospital at Vijaynagar and then referred to Bikaner; but the victim succumbed to the injuries during treatment.

The present appellants claimed compensation on account of death of Kishan Lal stating his age at 45 years; his being in Bank employment working as teller with the State Bank of Bikaner and Jaipur; and his income at Rs.14,492 per month.

The Tribunal found the accident to have occurred for rash and negligent driving of the aforesaid bus RJ 07 P 2231 and held the respondents liable for compensation. While taking up quantification of compensation, the Tribunal found from the evidence available on record that the deceased was 47 in age and had about 12 more years in service. In relation to the salary income it was observed that the deceased was getting Rs. 7607/- as net salary after deductions and relying on the decision of the Hon'ble Supreme Court in Asha & others Vs. United India Insurance Co. Ltd. and another: 2004(1) ACC 533 it was considered proper to assess the income on the basis of net pay available. It was also noticed from the statements of a co-employee AW-3 Begdas Swami that the deceased was earlier a head cashier but at the time of his death he was working as teller and the post of teller was lower than that of head cashier. Learned Tribunal noticed that the deceased had given up promotion during his life-time and yet provided for some future prospects and took the average

income at Rs. 10,000/- per month for the purpose of assessment of loss to the claimants; and providing for one-third for personal expenditure of the deceased, adopted loss of dependency at Rs. 80,000/- per annum and looking to the age of the deceased applied a multiplier of 13 and thereby calculated pecuniary loss at Rs.10,40,000/-. The Tribunal also awarded Rs.5,000/- as funeral expenses and Rs.30,000/- as non-pecuniary compensation towards loss of consortium to the wife and loss of love, affection and guidance to the children. The Tribunal has, therefore, made an award of Rs.10,75,000 in favour of the claimants and allowed them interest at the rate of 9% per annum from the date of filing of the claim application.

Learned counsel appearing for the appellants has contended that looking to the age and income of the deceased and future prospects, the amount awarded by the Tribunal remains too low and deserves suitable enhancement. Learned counsel also submitted that the basic income at minimum Rs. 9740/- per month has been clearly established on record and the Tribunal has erred in not taking this as the base figure and in failing to consider that the deceased would have regularly received the allowances including dearness allowance and the estimation by the Tribunal only at Rs. 10,000/- per month

average income remains abnormally low and deserves enhancement.

Having examined the considerations adopted by the Tribunal and the award in its totality this Court is satisfied that this appeal remains bereft of substance and deserves to be dismissed.

The deceased was 47 years of age and in view of the evidence available on record, the learned Tribunal has reasonably taken his last net income at Rs. 7606/- per month; and in spite of observations about the deceased having foregone promotions, has provided for a reasonable element of likely future growth in income taking average earning at Rs. 10,000/- per month and after deducting one-third for personal expenditure has provided for maximum multiplier of 13 to the multiplicand of 80,000/- per annum. In such estimations future certainties as well as uncertainties are required to be kept in view; and looking to the age of the deceased at 47 years the estimation by the Tribunal appears to be a fair projection of likely future scenario. Reasonable amount towards funeral expenses and non-pecuniary loss has also been awarded. The Tribunal has awarded interest at the rate of 9% per annum and such choice of rate of interest in the award made in the year 2005 remains rather on the higher side.

In ultimate analysis, this court is satisfied that the claimants have been allowed compensation rather on the higher side and there is no scope for upward revision in the award made in favour of the claimant-appellants.

In this view of the matter, there appears no reasonable ground to admit this appeal and the same is, therefore, dismissed summarily.

[DINESH MAHESHWARI], J.

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